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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/410,484	09/30/1999	JAN WADSTEIN	NATNUT-03972	6938

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EXAMINER

WEBMAN, EDWARD J

ART UNIT PAPER NUMBER

1617

DATE MAILED: 08/29/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/410484

Applicant(s)

WADSTEIN

Examiner

WEBMAN

Group/Art Unit

1617

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period of Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 5/29/03
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-18 is/are pending in the application.
- Of the above claim(s) 4-6, 8, 10-18 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-3, 7, 9 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

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Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Applicants argue that Ms. Nguyen indicated the case would be allowable with the limitation of independence from weight loss. However, Ms. Nguyen assumed that applicants would provide evidence supporting the limitation.

Applicants argue that Ms. Nguyen did not consider the declaration of DRS. Dong and IP, paper #15, filed 2/4/02. However, Ms. Nguyen had considered the declaration.

Applicants argue that the relationship between weight loss and reducing hypertension is weak based on that declaration. However, the examiner has reconsidered the declaration and finds no support therein for applicants argument.

In statement 3 of the declaration applicants state that the above relationship is weak because the data in statement 4 indicates the effect of CLA on blood pressure "most likely occurs through the regulation of key enzymes". However, there is no data provided to show that CLA does not affect processes controlling weight loss as well. It is well-known, even to the layman, that those who are overweight often suffer from hypertension. Thus, it appears that, for applicants ^{to} ~~to~~ prove the statement for weakness in 3 of the declaration, they must show that CLA acts independent of weight loss. In fact, in statement 6 applicants hedge on statement 3 with the second sentence: "thus, the blood pressure lowering activity of CLA may be due to a direct effect at the gene regulator level and may not be due to the overall effect of weight loss as suggested by the examiner." (underlining added here).

The 103 rejection is reinstated:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 7, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langer in view of Udell.

Langer teaches a method to reduce blood pressure by losing weight. See Langer, Clinical and exper. Hypertension (IDS of Jan. 24, 2000; page 1132, lines 8-10).

Udell teaches and sells CLA (conjugated linoleic acid), including the cis-9, trans-11 isomer of octadecadienoic acid, for weight loss (IDS of Jan. 24, 2000; entire document).

It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to use CLA in the method of reducing blood pressure by losing weight of Langer to achieve the beneficial effect of weight loss by taking CLA in view of Udell.

As to claim 9, it is well known in the art to determine the appropriate intake dosing by monitoring blood pressure, and body weight individually in order to achieve the treatment of hypertension.

Applicants can overcome the rejection by providing evidence that CLA reduces hypertension, controlling for weight loss.

No claims allowed.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward J. Webman whose telephone number is 308-4432. The examiner can normally be reached on Monday-Friday 9am-5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Padmanabhan can be reached on 305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 305-3592 for regular communications and 305-1235 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1234.

Webman/tgd
August 12, 2003



THOMAS J. WEBMAN
PATENT EXAMINER
GROUP 1617